THE FINANCIAL SERVICES ROUNDTABLE

Impacting Policy. Impacting People.

1001 PENNSYLVANIA AVE., NW
SUITE 500 SOUTH
WASHINGTON, DC 20004
TEL 202-289-4322
FAX 202-628-2507

E-Mail info@fsround.org
www.fsround.org

November 20, 2009

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: FRB Docket No. R-1370; Open-End Credit; Proposed Amendments to 12 CFR Part 226- Regulation Z and Its Official Staff Commentary

Dear Ms. Johnson:

The Financial Services Roundtable[1] ("Roundtable") respectfully submits these comments on the proposal by the Federal Reserve Board (the "Board") to amend Regulation Z with respect to certain acts and practices in connection with open-end consumer credit ("Proposal"). Roundtable members are among the largest credit card issuers and providers of open-end credit and we appreciate the opportunity to comment on these regulations that put into effect the Credit Card Accountability Responsibility and Disclosure Act of 2009 ("Credit CARD Act"). Specifically, the Roundtable is providing comments and suggestions on the following aspects of the proposed rule:

- Application of the rule
- Exceptions to the prohibition on increased rates and fees;
- Evaluating a consumer's ability to pay;
- Marketing to college students
- Time and date payment requirements;
- Requirements for over-the-limit charges;
- Limitations on fees and finance charges;
- Issues related to transactions without interest charges; and
- Effective dates.

I. Background to the Proposal

In January 2009, the Board adopted rules under Regulation Z ("January Regulation Z rule") regarding required disclosures for open-end credit, not home-secured. These provisions take effect on July 1, 2010. In May 2009, the Board published technical

[1] The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Roundtable member companies provide fuel for America's economic engine, accounting directly for $84.7 trillion in managed assets, $948 billion in revenue, and 2.3 million jobs.

amendments to these rules to clarify certain provisions. The Board accepted comments on these changes and will make the changes final in connection with this rulemaking.

In May 2009, the President signed into law the Credit CARD Act. Some of the provisions of the Credit CARD Act are similar to the January Regulation Z rule, while others are new requirements for creditors and issuers. The Board already has issued an interim final rule for the aspects of the Credit CARD Act that went into effect on August 20, 2009. Since there are several rules regarding open-end (not home-secured) credit, the Board has republished all the rules and interim rules in this current proposed rule, including the January Regulation Z rule, the May 2009 proposed clarifications, and the interim final rule. In addition, this proposed rule implements aspects of the Credit CARD Act including provisions on interest rate increases, over-the-limit transactions, and rules relating to underage consumers and college students.

II. The Proposal

The Proposal specifically addresses increases in annual percentage rates, evaluation of a consumer's ability to pay, special requirements for marketing to college students, certain restrictions and requirements for payments, an opt-in requirement for over-the-limit charges, and limitations on fees and finance charges. In addition, the Proposal seeks to move the implementation date of some of the January Regulation Z rule from July 1, 2010 to February 22, 2010.

A. Application of Rule

The Board proposes (under Proposal §226.2(a)(12)(ii)) to apply these regulations to credit card accounts under an open-end (not home-secured) consumer credit plan but do not apply to credit card accounts that access a home equity plan subject to Proposal §226.5(b) or an overdraft line of credit accessed by a debit card. The Roundtable ***urges*** the Board to add an additional exception for a line of credit accessed by a debit card that can only be used at an automated teller machine ("ATM"). The Board previously authorized this exception in an earlier rulemaking. We believe that such an exception is appropriate for the following reasons.

A line of credit accessed by a debit card can only be used at an ATM and cannot be used for the direct purchase of merchandise or services at a Point of Sale Terminal or through a charge card machine. As such, the occasions for common confusion or abuse of credit that are the focus of the Credit CARD Act simply are not present.

Additionally, in implementing the provisions of the Fair Credit and Charge Card Disclosure Act of 1988, the Board considered the scope of that legislation and excepted over-draft lines of credit accessed by check-guarantee or debit cards usable only at ATMs, <u>and lines of credit accessed by check-guarantee or debit cards usable only at</u>

ATMs. We believe that the Board should apply a similar analysis and provide for the same exception here. We note that the Board followed the same approach in implementing the Regulation Z amendments under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 and amendments to Regulation AA implementing the provisions of the Consumer Credit Card Account Practices Rule. To omit this exception in the new regulations would reverse 20 years of treatment of these limited credit lines and would yield relatively little consumer benefit, given the restricted use of this product, while greatly increasing their regulatory costs.

B. Exceptions to Prohibition on Increases in Rates and Fees

The Proposal provides six exceptions to the prohibition of creditors increasing annual percentage rates ("APRs") and certain charges and fees; when: (1) a temporary rate lasting at least six months expires; (2) the rate is a variable rate; (3) advance notice is given; (4) the minimum payment is 60 days or more past due; (5) the consumer completes or fails to comply with a workout arrangement; or (6) the APR has been reduced pursuant to the Servicemembers Civil Relief Act ("SCRA").

1. Apply exceptions to fees

Two of these exceptions apply only to rates, and not fees. The Roundtable ***urges*** the Board to include fees in the exception for temporary rates and the exception for SCRA (Proposal §§226.55(b)(1) and (6), respectively). Along with rates, issuers often lower or waive fees for a temporary time period or pursuant to the SCRA. If fees are not included in these exceptions, creditors likely would be dissuaded from lowering these fees for their customers. The Roundtable ***urges*** the Board to include fees, in addition to rates, in these exceptions, as this would remove obstacles to issuers helping consumers lower their cost for credit.

Additionally, we believe a deferred interest period should be excluded from the definition of a "temporary rate" in Proposal §226.55(b)(1). A deferred interest period is not a reduction in rate; rather, a "deferred interest period" is exactly that - the interest is merely deferred for a time period. Therefore, we ***urge*** the Board to exclude a deferred interest period from the definition of "temporary rate," and therefore, promotions with deferred interest periods would not be subject to the six month minimum period.

2. Loan workout exception

Additionally, we ***ask*** the Board to clarify the requirements for loan workouts. For the workout and hardship arrangement exception, the Proposal requires the creditor to provide a disclosure of the terms of the arrangement prior to commencement (Proposal §226.55(b)(5)). Currently, if a creditor and borrower reach a workout arrangement in mid-cycle, the creditor may apply the lowered workout rate to that entire payment cycle.

The Roundtable believes the regulation would still allow this practice, but we ***ask*** the Board to clarify this. If the regulation would not allow a creditor to backdate the lowered rate to the beginning of the cycle, the consumer would have to wait until at least the next payment cycle to receive lowered rates and reduced fees. We believe the intent of the statute and regulation is to provide a consumer a lowered rate and reduced fees with full disclosure of the terms of the loan workout. Once proper notice is given, allowing the creditor to back-date the lowered rate to the beginning of the cycle would be extremely beneficial to consumers and would still ensure they are fully informed on the terms of the agreement.

Also, we ***urge*** the Board to consider adding more flexibility to the disclosure requirements of loan workout agreements. The Credit CARD Act (§101(b)(2)) does not require the disclosure be in writing, only that it be clear and conspicuous. We agree that the consumer should be provided a disclosure with all the terms of the workout arrangement, but the start of the workout should not be delayed. The regulation should allow the disclosure to be oral, in writing, or electronic where the consumer is guided to a website with the disclosures. This would provide consumers with immediate relief through a reduction in rates and fees, while still ensuring that the consumer has all the information necessary to move forward with a loan workout. This would meet the requirements and underlying goals of the Credit CARD Act—to provide consumers with immediate relief and ensure that consumers understand the workout arrangement they are entering.

C. *Evaluating Consumer's Ability to Pay*

The Proposal requires an issuer to evaluate a consumer's ability to pay the required minimum periodic payments before extending credit. The Proposal also requires issuers to have reasonable policies and procedures in place to evaluate this ability, including a consideration of the consumer's income or assets and current obligations.

1. <u>Evaluating income</u>

The Official Staff Commentary outlines what an issuer may consider in evaluating a borrower's income, assets, and obligations (Proposal §51(a)-4). While it is implied that creditors could use accurate income predictors in evaluating a consumer's ability to pay, we would appreciate greater clarity. Specifically, we ***suggest*** adding accurate income predictors as a valid method for considering the borrower's income. Credit card issuers have long used accurate income predictors in evaluating the credit extensions and this regulation should allow for that continued use.

It is not clear from the Proposal whether a borrower's income information would have to be updated prior to an increase in the credit line. The Roundtable believes that for future credit limit increases, it would be reasonable to rely upon the income stated by the borrower at the time of application in conjunction with other factors, such as outstanding debt and payment history.

2. Repayment history

For existing customers, repayment history is an accurate predictor of ability to repay. Even more than income, assets, and obligations, repayment history is a trustworthy factor in evaluating an existing consumer's ability to pay. One Roundtable member company notes that 3 to 6 months after the account is open, using payment history as a basis is five and a half times more effective than using income and obligations to predict default. Twelve to eighteen months after an account has been opened, payment history is twelve times more effective than income and obligations. Therefore, the Roundtable ***urges*** the Board to include repayment history as a factor for credit line increases for existing customers.

3. Joint accounts

The Roundtable is concerned that Proposal § 226.51(a) on the consumer's ability to repay may be too limiting when applied to joint accounts. Proposal §226.2(a)(11) would define consumer as "a cardholder or natural person to whom consumer credit is offered or extended…." We are concerned that this does not address the issues of joint accounts. When consumers apply jointly for an account, one consumer often has a greater ability to repay than the other. If, as the language of the Proposal could be interpreted to indicate, each individual account holder's ability to repay must be separately analyzed, there may be unintended negative consequences. For example, Regulation B allows non-income-earning spouses to build credit by establishing joint accounts with their income-earning spouses. If the ability to repay standard must be applied at the individual consumer level rather than at the account level, a joint account may not qualify if one spouse lacks ability to repay, negating the Regulation B benefits.

If denied a joint account, an alternative would be for an income-earning spouse to apply for a separate account with the non-income-earning spouse designated as an authorized user. However, this would deny the non-income-earning spouse full participation in the account, even if the non-income earning spouse is the one who manages the household finances. Therefore, the Roundtable ***suggests*** the Board clarify that when an account is evaluated under Proposal § 226.51(a), the ability to repay test could be applied for the account itself (rather than each "consumer") and can be conducted in a manner determined by the creditor.

We note that a similar flexible analysis appears to be called for with respect to young consumer accounts when a young consumer wants to apply jointly with a person who has an ability to repay and is over 21 (Proposal §226.51(b)). In this instance, the joint applicant (applying with the person who is under 21) must be viewed on their own for purposes of meeting the ability to repay standard in Proposal §226.51(a).

This does not take into account the common practice of a young consumer applying for a joint account with a person over 21 who does not meet the ability to repay individually but with whom they would qualify for an account if their individual attributes were considered jointly. The Roundtable believes that, in this instance, it would be appropriate to make an ability to repay determination at the account level on a joint account. In this example, if neither person had the ability to repay individually, creditors would be able to aggregate their attributes to determine whether <u>at an account level</u> there would be the ability to repay. Currently, many people utilize joint accounts to take advantage of building credit by having two incomes to make payments. Failure to accommodate this process would be a disservice to consumers rather than a protection.

D. Marketing to College Students

Under Proposal §226.57(c), issuers are prohibited from offering inducements to college students at branches that are within 1,000 feet of a college campus. We ***urge*** the Board to include an exception to this prohibition to allow bank-wide promotions that are not specifically targeted to colleges and are not part of an agreement with a college to take place at bank branches located within 1,000 feet of a college campus. Without this exception, the proposed rule would deter banks from offering inducements to any applicant in a location within 1,000 feet of a college campus, which will result in under-serving certain communities and reduce the availability of credit to consumers who live or work on or near a college campus.

E. Payment Requirements

The Board proposes several requirements for creditors on receiving payments, including the cut-off time for payments due, the exact date payments are due, and protocol for when the due date falls on a holiday or weekend. The Roundtable appreciates the Board's detailed Proposal and suggests some improvements.

1. <u>5:00 p.m. cut-off time</u>

As mandated in the Credit CARD Act, the Board proposes that cut-off times for payments due must be no earlier than 5:00 p.m. This cut-off time is for all payments—those received by mail, electronically, by phone, and in person. We appreciate the Board allowing creditors to specify the location for receipt of payments, thus eliminating difficulties that would arise if the 5:00 p.m. time was based on the location of the consumer.

It is not entirely clear whether the 5:00 p.m. cut-off time applies to just conforming payments or if the Board's intention is that it applies to all payments under open-end credit. In Proposal §226.10(b)(1) and Proposal §226.10(b)(2), the Board requires that creditors establish reasonable requirements for conforming payments and gives examples of reasonable requirements. While Proposal §226.10(b)(2) does not specifically note that these examples are for conforming payments, given the language in Proposal §226.10(b)(1), the Roundtable believes that was the Board's intention. We ***encourage*** the Board to specify in Proposal §226.10(b)(2) that the examples of reasonable requirements are only for conforming payments.

2. Due date on the same day every month

Section 106 of the Credit CARD Act adds new TILA §127(o) that requires the due date be the same day every month. The Board proposes to implement this in Proposal §226.7(b)(11)(i). The Board recognizes this will preclude creditors from setting due dates on the 29th, 30th, or 31st of the month and seeks comments on the operational burdens associated with this requirement. Creditors spread out due dates over the entire month to reduce the burdens and ensure for timely processing of payments. By eliminating three possible days for due dates, processing will be slower and more burdensome. To ease the operational burdens, we ***suggest*** the Board consider applying this requirement to new accounts only, not existing accounts. This would greatly increase the ability of creditors to continue to process payments in a timely fashion. However, if the Board believes that the Credit CARD Act requires all existing accounts be brought into compliance with the same date requirement, then we ***urge*** the Board to allow creditors up to one year to migrate existing account due dates from the prohibited dates to allowed dates.

Alternatively, the Roundtable suggests that creditors be allowed to use the 29th and 30th as due dates for payments. February would be the only exception, and for accounts that had payments due on the 29th and 30th, creditors would move the due dates to the 1st or 2nd of March. This would level out payment volumes for creditors and ease operational burdens.

3. Due dates on weekends and holidays

The Proposal sets certain requirements for creditors when a consumer's payment due date falls on a day when the creditor does not accept payments, such as a weekend or holiday. Specifically, the Proposal provides that:

> § 226.10 Payments.
> (a) General rule. A creditor shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge or except as provided in paragraph (b) of this section.

*****

> (c) Adjustment of account. If a creditor fails to credit a payment, as required by paragraphs (a) or (b) of this section, in time to avoid the imposition of finance or other charges, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next billing cycle.
>
> (d) Crediting of payments when creditor does not receive or accept payments on due date. If the due date for payments is a day on which the creditor does not receive or accept payments by mail, the creditor may generally not treat a payment received by any method the next business day as late for any purpose.

The wording of this suggests that payments received on dates that the creditor does not receive or accept payments must be credited as though received **before** rather than on, the following business day. This is because the creditor has no way of knowing on what day the mail was received in the mail box. Alternatively, the creditor would have to do manual reporting to identify payments processed on Mondays and the day after a holiday that had due dates that fell on the weekend or holiday and refund finance charges and late fees as appropriate. It would be operationally expensive to do so and thus the only true option for creditors would be to backdate all payments. We believe that the intention of the law is to preclude late charges rather than daily interest charges, since it allows crediting on the next business day as long as the payment is not treated as "late for any purpose." We ***suggest*** the Board clarify that the charging of daily interest on the amount paid by the payment is NOT treating the payment as late.

F. Over-the-Limit Charges

The Proposal implements requirements and limitations on a creditor's ability to charge a fee when making an extension of credit that exceeds the credit limit. The Proposal requires a consumer's express consent before imposing these fees, as well as the ability of the consumer to revoke this consent at any time.

1. Opt-in

The Credit CARD Act requires that creditors receive express consent from the consumer prior to charging over-the-limit fees. The Board asks for comments on the best way to give consumers the opt-in notice. The Roundtable ***recommends*** the Board provide flexibility to the creditors in providing this notice. Some creditors may choose to issue a separate notice, while others may include the notice with other disclosures. The regulation is very detailed as to requirements for consent, including that consent to these fees cannot be combined with consenting to any other aspects of the credit extension. Due to the high level of specificity in the regulation, the Board should allow the individual creditors to determine the best way to give the opt-in notice.

Additionally, we note that the Board allows opt-in notice and revocation to be given in writing, by telephone or electronically. Some members have indicated they would like to give opt-in notice and revocation by telephone but are concerned that they also would be required to provide opt-in by writing and electronically. Numerous channels create compliance problems, thus, the Roundtable ***recommends*** that creditors be allowed to limit opt-in and revocation notices to one method.

Given that consent is required before over-the-limit fees may be charged, creditors should be given the flexibility to determine the most effective and efficient way to give notice.

2. Revoking election

The Proposal requires a creditor to comply with a consumer's request to revoke the over-the-limit coverage as soon as reasonably practicable (Proposal §226.56(i)). The Board seeks comments on whether a safe harbor of responding as soon as reasonably practicable would be helpful, and if so, what the time period should be. The Board suggests a safe harbor of five business days, meaning that a creditor would have five business days to comply with a consumer's revocation request. The Roundtable ***urges*** the Board to expand the safe harbor to ten business days, as creditors will need sufficient time to comply with a consumer's request.

G. Limitations on Fees

In Proposal §226.52, fees (with limited exceptions) must be tracked during the first year an account is open. If the total of such fees exceed 25 percent of the original credit limit, the creditor must cease charging fees for the remainder of that year. The Roundtable ***urges*** the Board to reconsider what constitutes a fee for purposes of this section and to exclude from the definition of "fees" those fees related to consumer-initiated transactions. We believe that Congress intended to stop "fee harvesting," a practice whereby creditors would make the opening of an account contingent on large fees charged to the account amounting to a high percentage of the credit limit. Such fees were often large annual fees, "program fees", monthly servicing fees, "account set-up" fees and large one-time "processing fees" on accounts with credit limits as low as a few hundred dollars. As a result, the cards would often be left with less than one hundred dollars of usable credit. We believe these types of fees were the object and intention of Congress in the Credit CARD Act.

The Proposal's broad definition of fees includes fees associated with consumer-initiated transactions, such as cash advance fees and balance transfer fees - fees that are not the object of Congress. Inclusion of these fees creates a burdensome tracking process for issuers of all accounts (even those accounts that do not have unusually high initial fees and do afford the customer hundreds, if not thousands, of dollars in available credit).

In short, under the Proposal, a consumer's pattern of usage on the account may be more significant than the imposition of outrageously high initial charges to open the account.

Under the current Proposal, creditors will be forced to create complex systems for tracking fees and will have to stop charging fees in some situations, not because the person did not have adequate available credit at the time the account was opened but because the consumer chose to engage in an unusual amount of transactions triggering fees, transactions that could largely have been avoided. Additionally, creditors may limit certain card features during the first year of the account or decline to authorize certain types of transactions if they are not able to charge a fee for the risk or costs associated with the transactions. Ultimately, this Proposal may stop "fee harvesting" but may also have detrimental impacts to many creditors that did not engage in the intended type of activities.

We note that most general purpose credit card issuers do not charge transaction based fees on the core use of a credit card (purchase transactions) but rather only charge transaction based fees on non-core features that generally present additional risk and/or administrative burden to the issuers and that are offered as a convenience to consumers (like cash advance transactions and foreign currency conversions). As an alternative approach to requiring that all transaction fees be counted toward the 25 percent threshold, the Roundtable ***suggests*** that transaction fees on core uses of the card (purchases) be counted rather than transaction fees on features that are not core to the product but that are offered as optional fee based features (like cash advances).

Additionally, the Roundtable ***urges*** the Board to clarify that reference to "fees that the consumer is not required to pay with respect to the account" in Proposal §226.52(a)(2)(ii) does not include any feature of the account that the consumer chooses to add and/or use at their option. Neither any cost associated with adding the feature nor any cost associated with using the feature should be considered a fee for purposes of this section. Optional features fitting under this exception would include features such as overdraft protection; voluntary (not required) credit insurance, debt cancellation or debt suspension coverage; rewards programs; and enhanced purchase or warranty protection services.

The Roundtable also notes the administrative burden associated with crediting any fee exceeding the 25 percent (and associated interest) "at the end of the billing cycle during which the fee was charged" as stated in Proposal Comment §226.52(a)(1)(i)-2. Because most systems of record will not be able to determine that a fee has exceeded a threshold until after the account cycles, it is extremely difficult to credit the account as of the last day of the billing cycle. Instead, it would be possible to credit the fee (and associated interest, if any) by the end of the next cycle. The net effect for the consumer would be no different, but it would significantly reduce the administrative burden for the creditor.

Finally, the Roundtable ***urges*** the Board to consider making this rule effective for new accounts originating on or after February 22, 2010. Creditors are building complex tracking tools to comply with this rule but do not have mechanisms for singling out applicable fees charged on accounts opened before the effective date and aggregating those fees. Additionally, because consumers were not aware of the rule, they may have engaged in optional fee bearing transactions that would force creditors to restrict their credit or reduce the availability of certain account features for the remainder of their first year.

H. Limitations on the Imposition of Finance Charges

Many card issuers, either contractually or by custom and practice, will waive interest that accrues during a billing cycle in which payment in full is received on an account that has been revolving. In other words, even if an account has been accruing interest every month for years, when the consumer pays the last new balance on the periodic statement in full by the related due date, the creditor will accept that amount as payment in full without calculating interest on the days in the cycle before the full payment was received. Essentially, by waiving the accrued interest for those days, the creditor gives the consumer favorable treatment by applying the payment as of the first day of the cycle rather than on the date payment was actually received. This foregone interest is commonly referred to as “trailing interest.” Members of the Roundtable have told us that they cannot continue this practice without clarification from the Board that the term “grace period” does not apply to the forgiving of the trailing interest.

The problem is that the term “grace period” as used in Proposal §§ 226.54, 226.5, 226.5(a) and 226.6 appears to encompass the continuous time period beginning on the date of a transaction and expiring on the last day the consumer may repay that transaction without incurring any periodic interest charge. However, Proposal § 226.54(a)(1)(ii) provides that when such a grace period is provided, it cannot be conditioned upon payment of the entire balance on or before the due date listed on the periodic statement where the purchase first appears. Rather, the interest-free grace period will apply to any partial payment on or before the due date applied to that purchase transaction. This would appear to call into question the forgiveness of trailing interest that we previously discussed.

We believe the Proposal does not intend to create an additional grace period other than the continuous time period referred to above. “Grace period” does not refer to a way to avoid paying <u>additional</u> interest charges; it refers only to a way to avoid paying <u>any</u> interest charges. This is clear from the heading of the account opening disclosures: How to Avoid Paying Interest. In contrast to the “grace period,” forgiveness of trailing interest is simply a waiver of additional interest that would otherwise accrue on a balance that has already been paying interest.

If the forgiveness of the trailing interest meant that the last days of the account's charges that the creditor forgoes the interest were a grace period, it would call into question the collection of interest prior to the full payment. To avoid that, creditors will have to stop waiving the trailing interest, a disservice to the consumer that we believe is not intended by the Board. Therefore, the Roundtable ***urges*** clarification that the Board does not intend Proposal §226.54(a)(1)(ii) to apply to the forgoing of trailing interest, regardless of whether the creditor has included the waiver as a contractual term or whether the interest is waived solely as a customer service. We believe clarifying this in the Commentary would be appropriate and sufficient.

I. Issues Related to Transactions without Interest Charges

Some of our member companies offer credit on which no interest is charged. It appears to us that these no interest transactions are substantially different than temporary rates but we ***ask*** the Board to consider adding more clarity on these specific issues.

1. <u>Changes in monthly statement disclosures</u>

Proposal §226.7(b)(14) requires that a disclosure be added to the customer's statement for two billing cycles immediately preceding the date at which a deferred interest or similar transaction must be paid in full in order to avoid the imposition of interest charges. The statement would note that the customer must pay the transaction in full by a specific date in order to avoid being obligated for the accrued interest. Many consumer credit card programs include transactions in which no interest is assessed for an initial promotional period and no interest will ever be charged for the promotional period, regardless of whether the transaction balance is paid before or after the expiration of that promotional period. We ***suggest*** that the Board specifically exempt those no payment/no interest transactions from this periodic statement disclosure requirement.

2. <u>Temporary rate</u>

The Proposal requires that a temporary rate must have a duration of at least six months before the creditor can increase the rate. We ***ask*** the Board to clarify that the definition of temporary rate does not include "no interest transactions" and thus "no interest transactions" are not subject to the six month duration.

3. <u>Payment allocation</u>

Proposal §53 provides that the creditor shall apply to amounts in excess of the minimum required payment first to the credit card balance with the highest interest rate and then to the balance bearing the next highest interest rate, and so on, until the payment is exhausted. An exception exists to this rule in that the entire amount paid by the customer in excess of the minimum payment amount is to be applied to a balance on which interest is deferred during the last two billing cycles immediately preceding the expiration of the period during which interest is deferred.

What is not specifically defined in the law, the Proposal or the Official Staff Commentary is whether "no interest/no payment transactions," in which no interest will be assessed during the promotional period regardless of whether the customer pays the balance in full before or after the expiration of the promotional period, is a deferred interest transaction to which payments must be first applied. The Board does state in their section-by-section analysis that deferred interest or similar programs are those that do not obligate the customer to pay interest if the balance is paid in full prior to the expiration of the promotional period, but the Proposal and the Official Staff Commentary do not explicitly state whether the "no interest/no payment" transactions balance is included in the definition of deferred interest transactions. It would be very frustrating for customers who are forced to allocate payments to "no interest/no payment" balances which will never accrue interest before the end of the promotional period.

The Proposal and the Official Staff Commentary also do not address what are called "Special Terms transactions," in which interest accrues during the promotional "no payments" period, regardless of when that transaction is paid, with the entire amount of the transaction being due at the end of the promotional "no payments" period.

We ***suggest*** that the final rule state that deferred interest transactions to which payments may have to be applied before interest-bearing balances do not include: (1) transactions in which no interest will ever be assessed, regardless of when the balance is paid, whether during or after the promotional period; and (2) transactions which accrue interest during the promotional period in which no payments are due and that interest will be due and payable at the end of the promotional period, regardless of when payments are made on the account.

Additionally, the Proposal does not address the question of whether a creditor can change the payment application method at the request of a customer. The Roundtable ***suggests*** that the final rule should allow a creditor the discretion to change the payment application method on a customer credit card account at the request of a customer.

J. Effective Dates

The Board proposes to move effective dates of the January Regulation Z Rule from July 1, 2010 to February 22, 2010. The Board is considering whether this effective date should apply to both the provisions of the January Regulation Z Rule that are not directly affected by the Credit CARD Act but that are included in the Proposal as well as new and amended requirements proposed pursuant to the Credit CARD Act. The

Roundtable ***advocates*** the Board keep the original effective dates for all aspects of the January Regulation Z Rule that are not required to be changed by the Credit CARD Act.

These are extremely complicated requirements and entail complex procedures and operations. The Board itself notes that there are tabular or other formatting requirements for disclosure that are difficult to design and implement and need to be tested for accuracy. Of note, one Roundtable company estimates that implementing the changes required for periodic statements under Proposal §226.5(b)(2)(i) would require at least 30,000 worker hours and $3-5 million in costs. Resources are already being utilized to implement the Credit CARD Act provisions that take effect in February 2010. Credit card issuers need the full implementation period through July 1, 2010 for the non-Credit CARD Act provisions, in order to implement the rule.

III. Conclusion

In conclusion, the Roundtable appreciates the opportunity to comment on this Proposal, and ***urges*** the Board to further refine the Proposal to address the operational issues identified in these comments. If you have any questions, please feel free to contact me or Melissa Netram at 202-289-4322.

Sincerely,

Richard Whiting
Executive Director and General Counsel